

Locating common  
Court Records of  
Feudal Germany  
1500-1850

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## 1. Introduction

The Holy Roman Empire was divided into approx. 300 territorial states which exercised their own autonomy and were represented at the Reichstag (imperial parliament) and some 1500 minor lordships subject only to the emperor. See their names and descriptions in the following list at [http://de.wikipedia.org/wiki/Liste\\_der\\_Territorien\\_im\\_Heiligen\\_R%C3%B6mischen\\_Reich](http://de.wikipedia.org/wiki/Liste_der_Territorien_im_Heiligen_R%C3%B6mischen_Reich)

From within these states emerged different administrations for cities, the church or other landowners. Such administrations took care of taxes, police, military and judicial matters with the emperor holding “Halsgerichtsbarkeit”, meaning he had the last word in criminal cases which required a death sentence. The emperor was the head of the Kammergericht. This court was held where the king was present at the moment. At this court criminal acts of those subject to the emperor only (Reichsunmittelbare) and other legal matters pertaining to privileges and stipulations were judged. Since the sovereign was out of the country often, there was no way to take care of these judicial matters when problems arose. Therefore, the Reichskammergericht was established in 1495. It could issue imperial bans. For all courts which did not have *privilegium de non appellando et non evocando* the Reichskammergericht was the court of appeal.

Next to jurisprudence on the national level existed “Marktrecht” (right to hold markets), from which “Stadtrecht” (city constitution) developed. The cities formed judicial districts headed by the Stadtrat (city council). Each city had its own court procedures in the city hall, the market place or the Schöffenhause (house of jurors). The administration of justice was in the hands of the jurors who would be in charge of giving the verdict. Over them presided the judge

(mayor) or an otherwise installed official who would hand down the verdict. When a verdict could not be reached, judgment was sought for in another city rather than from another administration within the territory. If jurors were not available, the city council took over. The citizens came all under the same law and went to the same court, namely, the Stadtgericht (city court). The law differed from city to city, i.e., Magdeburg law vs. Lübeck law. It became important to hire jurists. They came out of the ranks of a few families and were installed as members in city councils. The citizens' right to property brought about special legal regulations. What was city law later became territorial law.

When the House of Meroving obtained more and more power, the forming of estates and barter economy began. To own land equaled power. Not only the sovereign was inclined to accumulate land, the Church followed suit and so did the rising class of the nobility. This trend, together with the fact that a land owner could not be a warrior away in battle or be at prolonged gatherings away from the area, created two distinct classes: the warriors and the farmers. This class distinction eventually destroyed the status of the independent farmer who originally owned his property, took part in the three-field-system and had claim to meadow and forest and brought him into submission. The warriors were able to subdue the less powerful farmers. The institutions of fiefdom and serfdom became widespread. By transferring formerly owned property, the farmers bought protection, especially from the Church. Once a village was in the hands of a given landowner, the entire population of that village could be put under the protection of the owner and become subject to interest payments. The grade of dependency

among the majority of farmers was not all equal. However, fixed payments and certain deliveries in kind were an everyday occurrence. A landowner could also obtain lower cognizance. He had the right to order and to prohibit. He was in charge of the entire local administration but allowed villagers to voice their grievances. For this purpose a Schultheiss (mayor) and jurors for the lower jurisdiction were installed to “find the law”. However, justice was not all equal, since there existed courts for the gentry and courts for the simple folk.

In 1526 recommendations were made to alleviate the yoke of the workers of the land by giving them the right to choose marriage partners, reducing statute labor and allowing manumission (release from serfdom). Such requests went unheeded. In fact, the most dismal time period in the life of the German farmer began, economically as well as socially at the time of the Reformation and lasted into the 19<sup>th</sup> century. Since the landowners ceased to be warriors and became farmers instead, they needed many forms of assistance with their large enterprises. The conditions for the farmers became deplorable. Even though there were other attempts to dismantle the restrictions on the rural population, it did not happen on a larger scale until the French Revolution and Napoleon’s administrative influence on parts of Germany. By the middle of the 1800s most farmers were able to control their own lands and lives.

## **2. The development of German law**

The king was the highest worldly judge. Since he was unable to be present everywhere to assume his obligations, he distributed jurisdiction and administration rights as fiefs which were handled by his representatives. Bishops and abbots as well as minor vassals, such as knights and soldiers came under the king's sphere and so received administration of justice. The king's representatives formed the first level of jurisdiction and administration. With time they themselves looked at these rights as self-contained or inheritable. They in turn issued such rights to others as they deemed best and the law was executed in their behalf. Nobles also made sure they received the highest level of jurisdiction, the so called "Blutgerichtsbarkeit" (ability to pronounce a death sentence), formerly a royal privilege.

The profession of judges and jurors were established at a time when jurisprudence was still in its infancy. German law developed out of Roman law which the emperor or king supported. Gradually the German law was suppressed by jurists, who became more and more powerful as they advised kings and rulers. Through jurist bureaucracy they had a weapon to fight the nobility which insisted on class privileges. The jurists became town clerks or were appointed to city councils. Similar developments occurred in the rural areas. Jurists sought to displace laymen. As learned men they were often able to maneuver themselves into positions of influence, like taking over the administration of the Patrimonialgericht (lower court) of a nobleman's estate. With time most of the business of a feudal lord was attended to by them.

The principles of pure Roman law were not adopted across the board into German jurisprudence, rather, a modified version was applied. For instance, the German family law

stayed intact. The law governing land records was partly Roman, partly German-based. Inheritance laws were subject to Roman conceptions. In Northern Germany where Lübisches or Magdeburg law prevailed, Roman law had less of an influence.

The laws, and thus the keeping of the records, were irregular. Some farmers (very few) were able to cultivate their own ground and had the right of succession without interference from the manorial lords. Most farmers were leaseholders. Manor lords leased out property with inheritance options, but remained the owners of the property. The divergence in the law lasted until 1789. In those states which united with France, all farmers with heritable rights became owners and were free of all encumbrances. During the 19<sup>th</sup> century all other German territories adopted the same laws.

### **3. Administrations and records**

The medieval state knew only local and sovereign administrative measures. The demands of military, legal administrations and officialdom required the development of new measures such as a budget and regulated financial management. The administrative tasks of territorial states as seen in Hannover were overseen by an Amtmann or Drost if he was of nobility. At his side served the administrative secretary, also a learned man. Both had to be present at each negotiation and sign side by side. Under the Amtmann and his secretary served Vögte, Intervögte and other minor officials. An Amt was a local center of the ducal domain and was concerned with local as well as the administration of justice. All procedures were recorded in the Amtsbuch which was also known as Urbare, Salbuch, Stiftsbuch, Kopialbuch etc. The reason for establishing such books was the safeguarding of evidence. Local and legal administrations were later separated and all lower court matters came under the auspices of an Amtsgericht.

The lower jurisprudence also known as Patrimonialgericht, Dorf-, Thing- or Hubengericht was concerned with lower offences, which were executed with fines or corporal punishment, such as Pranger or the Schandpfahl (pillory) or carrying of the Lästenstein (slander stone). Far into the 16<sup>th</sup> century judges were laymen until they were replaced by men who studied law. Lower jurisprudence was responsible for non-contentious matters such as inheritances as well as registering and overlooking sales, prenuptials, guardianships etc., also known as "Niedere Gerichtsbarkeit". Cities had their own lower and higher courts.



Most cities which were formerly self-regulated and independent came under the rule of the sovereign and later became state-run administrative districts. Only three cities have retained their autonomy to this day: Bremen, Hamburg and Lübeck.

In 1806 sixteen German states broke away from the Empire and became a confederation under Napoleon I (Etats Confédérés du Rhin). The Rhine confederation with few exceptions established an administration mirroring the French model. States became districts or counties. The feudal system was dissolved, the farmers were freed. Prussia formed the Northern German Confederation. All their member states became independent and received legislative, cognizance, police, conscription and taxation rights. A complete reorganization occurred. Jurisprudence was transferred to civil courts.

#### 4. Types of administrative documents

- Stadtbücher

The city administrations preceded the administrations in the territorial states. Cities formed their own administrations and legal norms. All documentations were recorded in the Stadtbuch (city administrative record). Such a book contained the properties and bonds of citizens. At first everything noteworthy appeared in one book with mixed content (Stadtbuch gemischten Inhalts), however, administrative measures made it necessary to divide various legal and other administrative steps into types or series. Such are known as registers (Kopiere und Register), Kämmereibücher (books of the financial administration), citizen books (Bürgerbücher), Rechnungsbücher (accounting books), Steuerbücher (tax record books), Zinsregister (books calculating interest) and Liegenschaftsbücher (land records). The recordings of the land registry (freiwillige Gerichtsbarkeit) such as Käufe (purchases), Verkäufe (sales), Verpachtungen (leases of land) Kreditgeschäfte (credits), Testamente (wills) and prenuptials (Eheverträge) became part of new administrative measures.

- Amtsbücher

The oldest sources containing documentation about possession of fiefs are recorded in Urbare. They contain tenures of properties and tributes. With the expansion of a tighter financial administration in the German territories during the 16<sup>th</sup> and 17<sup>th</sup> centuries, new forms of the Urbare appeared. Their titles were different for the various territories. In Sachsen they were called Erbbücher, in Brandenburg Erbreister, in Anhalt Land- und Amtsregister, also Anschlag or Salbücher, in Southern Germany Lager- und Jurisdiktionalbücher.

Saxony was exemplary in the installation of Amtsbücher. These documents contained a general inventory of possessions and income of each Amt. They contained descriptions of manorial economies re. hunting rights, uses of forest, fishing, probate as well as all possessions, obligations and services to be rendered by all farmers and leaseholders for the duration of one year.

- Register

All business was transmitted through a Kanzlei (administrative office). All incoming business was recorded in a Kopialbuch, all outgoing correspondence in a Register (register). Since not all administrative offices worked along the same guidelines, the term “Register” became the dominant one, differentiating between incoming and outgoing correspondence. Registers gave evidence of a legal action when no actual document was issued.

- Lehnsbücher

From the beginning of the 14<sup>th</sup> century Kanzleien kept track of the fiefs and their obligations, but also kept track of the changes in sovereignty and ownership as well as deaths and settlements concerning an estate. Such actions were recorded in Lehnsbücher. Matters regarding fiefs were recorded, but no actual documents were issued at first. In the 15<sup>th</sup> century a register for documenting the issue or renewal of fiefs (Lehnbriefregister) was established. Each Kanzlei handled the issuing differently. Some documented entries by social status, i.e., earl, knight, vassal, others registered according to administrative districts, and still others registered in alphabetical order according to locality. Rarely are Lehnbriefe registered in chronological order.

- Grundsteuerbücher

Taxes began to be mandatory in the 14<sup>th</sup> century. They are traceable in Steuerbücher (tax books). At the end of the 15<sup>th</sup> century we see the so called Türkensteuerregister (general asset- and head tax). In Saxony the Landpfennig or Schocksteuer (land tax) was raised. In the Duchy of Magdeburg after annexation to Brandenburg appeared in 1682 a Steuerkataster (head tax). In such tax books the entire population with their taxable possessions was registered.

In the first half of the 18<sup>th</sup> century all territorial states had to undergo surveying and be subject to appraisals on a value basis. Out of this action emerged land registers, known as Feldregister or Kontributionskataster in Prussia. Such recapitulatory surveys not only provided the name of each farmer or leaseholder, but of every head of household, owners of houses and renters. In Saxony such books were called Individualhufenverzeichnisse. These were the forerunners of today's Kataster (land registries). Maps and land registers were created as well as Grundsteuermutterrollen (property taxes).

- Freiwillige Gerichtsbarkeit

While in the United States a federal or state administration handles matters of property, in Germany the land registry is attached to the lower court (Amtsgericht – Grundbuchabteilung). Besides matters of landownership freiwillige Gerichtsbarkeit also manages adoptions, matters of care and control, matters of accommodation, the active and passive property of a deceased person, matters of joint property and documentations done by a notary public. All such cases are of a non-contentious nature and have no plaintiffs or defendants, in other words no

litigation is pursued on this level of the lower court. Decisions are made by an administrator of justice according to the law. There is no verdict but usually a resolve.

In former times matters concerning freiwillige Gerichtsbarkeit were not yet clearly defined. Therefore, a systematic administration of sales and mortgages as well as matters of inheritance was established and accordingly "Inventarbücher", "Testamentsbücher", "Hypotheken- and Pfandbücher", "Handelsbücher" were installed.

It is the lower courts and their records with which this treatise is concerned. A great part of the German population (craftsmen, day laborers, servants) may not be found in court records because they were simply too poor to cultivate larger properties which had to be registered with the authorities. They also might not have participated in legal disputes; nonetheless it would be profitable to check court records because ancestors may appear as tenants or renters. One has to remember that over 90% of the German population were workers of the land and 80% bound to one manorial estate. The records of the manorial estates would be an important source to examine. Our ancestors had to report all inheritances, purchases, mortgages, litigations and other legal matters to the court. Prenuptial agreements had to be verified by the manor lord, were then recorded and ratified by the courts to become legally binding. To locate a given ancestor may also be difficult because several manor lords may have had a share in the property of an area. The subjugated population had to do their own administrative business in the place where their manorial estate was situated, no matter how far away.

In the cities an ancestor may have cultivated land outside the city walls or just bought land as an investment and had it cultivated by others. The registration offices were responsible for documentations and correspondence, the keeping of Urbare (index of rights to ownership), Rechnungsbücher (accounting books), Lehenbücher (distribution of fiefs), Bürgerbücher (citizenship records), and Hofgerichtsprotokolle (court records) to name a few.

Most of the above mentioned records are housed in state, city or manorial archives and before much money or time is invested to visit one of these institutions, it is advisable to know how a German archive is set up and most of all, how its inventory can be helpful to the family researcher.

## 5. The trip to the archive

### A. What is an archive?

It is an institution which keeps business records of juridical or natural persons, whose records are no longer needed and are of lasting worth. Such records were organically accrued, they were not generated. Archival records are preserved according to “Provenienzen” (as they originally were amassed).

### B. What do archivists do?

They are concerned with taking charge of records, preserving records, the induction of records and their usage. They have to decide what is relevant and worth keeping. For instance, around 5% of materials of modern administrations since 1948 are being kept. The rest goes to the shredder. It is not feasible to keep every last little shred of paper because an archive would burst at the seams if it did. It is an archivist’s prerogative to establish a true record from the sifted materials.

### C. What types of archives exist and what do they house?

There are federal, state, municipal and private archives. Each archive has its own individuality. Between archives exist no informal, hierarchical or dependent relationships, i.e., between the “Bundesarchiv” in Berlin and the “Landesarchiv” also located in Berlin exists no interdependent relationship. Each archive has its own structure and is guardian over different archival materials.

- The Bundesarchiv (federal archive) <http://www.bundesarchiv.de>

In this archive the documents of the federal government are stored. Documents of the chancellery, the ministerial departments since 1867 can be found here. The Bundesarchiv also houses military and film materials of the Federal Republic of Germany and the former German Democratic Republic, the Berlin Document Center, international treaties of the German Empire, the Federal Republic of Germany and the German Democratic Republic, personal files of the diplomatic corps and their estates. <http://www.auswaetiges-amt.de>

The “Geheime Staatsarchiv Preußischer Kulturbesitz” is a federal endowment. <http://www.gsta.spk-berlin.de> It is the archive of the Prussian state because it houses documents created between Königsberg and Kleve, formerly belonging to the state of Prussia.

- Staatsarchiv (Landesarchiv)

A state archive comes under the jurisdiction of a state. It is concerned with a) three divisions of its sovereign territory: the head of state, the government, the ministerial departments and their offices, the parliament, courts and all secularized dominions, b) lands belonging to the Second and Third Reich and lands which had come under allied control. Most state archives also take care of private bequests as well as paper work of parties or alliances in their area.

Addresses of all Staatsarchive are available at

<http://www.archivschule.de/service/archive-im-internet/archive-im-internet.html>

- Kommunalarchive (city archive)



A city archive houses documents created by a communal administration since medieval times. Next to administrative writings such an archive may have special collections of pamphlets, calendars, coins and medals, political propaganda, post cards, journeymen records, etc.

Records of former Reichsstädte (free cities) which had their own autonomy up to 1800 compare administrative wise with small state archives or excellent nobility archives.

**Note: Do not assume that in city archives all documentation of a local nature will be at your fingertips. Information might be available at the Bundes- or Staatsarchiv given the legal administrative jurisdiction. Generally speaking, city archives are good resources for concrete socio-historical questions. Konstanz, for instance, lost in 1548 the privilege of being a free city. For the next 200 years the city belonged to Austria, then to the Grand Duchy of Baden. Therefore, records about Konstanz can be found in the Landesarchiv Innsbruck or the Staatsarchiv Wien, respectively as well as the Generallandesarchiv in Karlsruhe.**

Smaller archives which do not employ archivists are being administered by advisory boards. Addresses and information will be available through

<http://www.archivschule.de/service/archive-im-internet/archive-im-internet.html>

click "Kommunalarchive"

- Church Archives

The archival records of monasteries, abbeys or chapters which all had their own jurisdictions became at one point or another secularized. The separation of church and state did not proceed evenly. Other archives outside the church absorbed the records dealing with legal matters. Which archives are involved is not known to the author at this time and will have to be researched by the family historian involved with questions of legality associated with the ecclesiastical landowner. A helpful piece of research guidance is the so called "Klosterbuch" as it is being created for Schleswig-Holstein. A comprehensive documentation of all monasteries from Ahrensböök to Uetersen will be established. The first step of this effort is to establish an inventory – an overview of all available sources. Similar books about monasteries already exist for Westphalia, Wuerttemberg, Brandenburg, Mecklenburg and in process are Nordrheinisches Klosterbuch, Niedersächsisches Klosterbuch, Hessisches Klosterbuch and Thüringisches Klosterbuch.

- Adelsarchiv, Herrschaftsarchiv, Gutsarchiv

This type of archive stores a collection of historical documents pertaining to nobility. If they were manorial lords and had "niedere Gerichtssbarkeit/Patrimonialgerichtsbarkeit" (jurisprudence), the archival records would be very much of public interest. Therefore, quite often this material has been acquired by state and other public archives. However, much of it is still in private hands. Access to these records is voluntary, except there exists an obligation to make the records available. A happy medium abides in Westphalia. The LWL (Landschaftsverband Westfalen-Lippe - organization) works together with the Westphalia Adelsarchive and usage is guaranteed. In the Freistaat Sachsen many manorial estates became

part of the state. They are part of the three state archives Chemnitz, Dresden and Leipzig. See sample at <http://www.archiv.sachsen.de/archive/leipzig/1667.htm>

The archive in Stade, for instance, houses the records of various Adelsarchive, i.e., Archiv der Ritterschaft des Herzogtums Bremen. The inventory contains so called "Meyerbrieft" (leasing contracts) see explanation in Deutsches Rechtswörterbuch online as follows:

"der **meierbrieft** ist die urkunde u<sup>e</sup>ber den contract, durch welchen ein gutsherr ein oder mehrere grundstu<sup>e</sup>cke und die damit verbundenen gerechtsame, jedoch mit vorbehalt seines eigenthumsrechts, ... einem landmanne zur wirthschaftlichen benutzung, auf gewisse jahre dergestalt u<sup>e</sup>berla<sup>e</sup>ßt, daß dieser alle von solchen grundstu<sup>e</sup>cken ... zu leistende statsabgaben und dienste u<sup>e</sup>bernehme ... ihm aber ... fu<sup>e</sup>r die nutzung des guts einen gewissen pacht- oder meierzins und sonstige ... altherkommliche leistungen ... entrichte 1803 [Gesenius, Meierrecht II](#) 197"

Besides the documents one would expect to find, such as leases, wills and marriage contracts other documents will be helpful in giving further clues about an ancestor. Such documents are Tabak-Steuerrollen (tobacco tax lists) in which all males of a tax district are named and Brandkataster (fire insurance) which give a listing of houses and names of their occupants together with the value of the properties.

Each federal state lists Adelsarchive in the "Verzeichnis national wertvoller Archive" (register of archives of national importance). This index is concerned with benchmark protection. Listing such archives serves as a guard against migration of valuable cultural heritage into foreign countries.

D. Which archive to choose?

A good analogy for any archival research is the investigation from the trunk to the branch, to the twig and lastly to the leaf.

To clarify the constitutional-political interconnection is the initial step. To which territorial state does the area of investigation belong? In order to find the correct archive, the “Archivfolge” has to be considered. This means that the archive follows the governance. Records could be in city archives, municipal archives or state archives. For instance, the former state archive Königsberg has come under the auspices of the Stiftung Preußischer Kulturbesitz in the Staatsarchiv Berlin.

Another consideration is the factual cognizance. Take for instance, written bequests. They could be in archives as well as in libraries or museums.

Furthermore, the regional aspects of one’s research are to be considered. Each archival homepage will take this into account as the inventory is listed. An excellent example can be found at <http://www.stadtarchiv.de/fileadmin/recherche/Familienforschung.pdf> for the city of Rosenheim. Every administrative or legal action has been categorized, given a time frame and a brief description of what a family historian would find in records.

#### E. The administration of an archive

For an easier way of finding the correct research path, the Findbuch, the archival inventory, is made available to the researcher. Here a brief description of the content is given and from when to when the record was gathered.

#### F. What are the conditions when visiting an archive?

The greatest promise for a successful visit to an archive would be a written request. This should be formulated as precisely as possible. In this way the archivist handling the question has the fairest chance to offer his best services. He could be of great importance to advise, giving direction to rich archival sources and if necessary, give information about other archives or literature which would help further the family historian's research.

The capability to read documents written before 1900 is a must. No archivist will sit down and read or interpret a text for the visitor.

Other limitations are the usage of certain records. There may be retention periods imposed or other constraints in place. The researcher would be well advised to find out beforehand what impediments are employed and not have a frustrating experience once he arrives at the archive.

Research material can be perused in the "Lesesaal" or other rooms provided for research. After having agreed to the rules, i.e., no eating on the premises, using pencils only etc., a sheet of paper with the archival numbers has to be filled out. All requests will be gathered and at a certain time be retrieved. Many archives limit the amount of materials so that affiliation and sequence can be better observed.

Lastly, there are fees to pay. They are legally assessed and made available through each archive.